

Texas Public Policy Foundation

Criminal Justice

Legislator's Guide to the Issues 2017-18



Pretrial Justice and Indigent Defense



The Issue

Every year, there are about one million bookings into Texas jails. Texas counties face significant expenses associated with pretrial detainees, who account for 60% of county jail inmates. Additionally, for any offense that carries the potential of jail time, such as possession of the smallest amounts of marijuana, counties are constitutionally required to bear the cost of providing counsel for indigent defendants.

The Facts

- As of May 1, 2016, there were 64,158 individuals in county jails, of which 34,081 were pretrial defendants. In fiscal year 2014, Harris County spent more than \$172 million on its jail while Dallas County spent in excess of \$110 million.
- Approximately 30% of Texas county jail inmates are receiving mental health services.
- In fiscal year 2015, attorneys were provided on 460,000 cases to indigent defendants at a cost of \$238 million.

Recommendations

- Expand voucher pilot program for indigent representation. A pilot program proposed by the Texas Public Policy Foundation in a 2009 paper and subsequently funded by the Texas Indigent Defense Commission allows indigent defendants in Comal County to choose their attorney among a list of qualified counsel maintained by the county. This consumer choice model provides greater fidelity in the attorney-client relationship rather than having the judge, who works for the government, appoint the counsel. Given the successful results so far in Comal County, this approach should be examined for use in other parts of the state subject to finding cost savings in other criminal justice programs to offset any potential increase in costs.
- Enhance use of police diversion. Models such as the Law Enforcement Assisted Diversion (LEAD) program in Seattle, the 24-hour crisis center for the mentally ill in San Antonio, and the First Chance Intervention Program in Houston have proven that empowering police to divert appropriate individuals without bringing them to jail can not only save taxpayers millions of dollars on jail costs, but also lead to greater public safety. Research has found that, as each 24 hours goes by in jail, a person is more likely to lose their job, family, and home, and in the case of mentally ill individuals often decompensate. Police diversion efforts can be strengthened by enhancing Texas' cite and summons law passed in 2007 to ensure prosecutors treat these cases similarly to those in which a custodial arrest is made and create a presumption that the authority should be exercised unless the officer determines the person is a danger to public safety or a flight risk.
- Strengthen statutes to ensure rapid assessment and provision of counsel for pretrial defendants. Counties across the state are uneven when it comes to promptly assessing pretrial defendants to identify their risk level and mental health status as well as expeditiously providing counsel. These steps are vital to ensuring that costly jail space is prioritized. Prompt administration of an actuarial risk assessment is the equivalent of a prompt diagnosis by a doctor and is essential to making an informed decision about whether someone should be released prior to trial, and if so what financial and other conditions are necessary. Similarly, representation is essential, as pretrial detainees are ill-equipped to challenge the amount at which bail has been set, which may not take into account factors such as strong community ties indicating they pose a low risk of flight.

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Resources

[Improving Indigent Defense in Texas](#) by Vikrant Reddy, Texas Public Policy Foundation (July 2012).

[Bringing Balance to Pretrial Proceedings: Solutions for Early Representation of Indigent Defendants](#) by Marc Levin, Texas Public Policy Foundation (April 2015).

[Public Safety and Cost Control Solutions for Texas County Jails](#) by Marc Levin, Texas Public Policy Foundation (March 2012).

